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 NORTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA

JCS

NANCIE LIGON, Individually and on Behalf  
 of All Others Similarly Situated,

Case No. **CV 12 4585**

CLASS ACTION

Plaintiff,

vs.

COMPLAINT FOR:

L'OREAL USA, INC.,

Defendant.

- (1) Violations of California Business & Professions Code Section 17200, *et seq.*;
- (2) Violations of California Business & Professions Code Section 17500, *et seq.*;
- (3) Violation of California's Consumer Legal Remedies Act, California Civil Code Section 1750, *et seq.*; and
- (4) Unjust Enrichment

DEMAND FOR JURY TRIAL

1 Plaintiff Nancie Ligon, individually and on behalf of all others similarly situated, brings  
2 this class action against L'Oréal USA, Inc. ("L'Oréal" or "Defendant"). The following  
3 allegations are based on personal knowledge as to Plaintiff's own conduct and are made on  
4 information and belief as to the acts of others:

#### 5 INTRODUCTION

6  
7 1. This is a class action on behalf of Plaintiff and others similarly situated who  
8 purchased Defendant's products that were falsely and misleadingly labeled, marketed and  
9 advertised as for sale only in professional beauty salons when consumers can purchase these  
10 products in major retail outlets throughout the United States where professional salon services  
11 are not available.

12 2. Defendant manufactures, advertises, sells and distributes professional hair care  
13 products throughout the United States for consumer purchase. By labeling these products as for  
14 sale only in professional salons, Defendant has created a demand for them. Such labeling,  
15 marketing and advertising creates a false perception by the consumer that these products are  
16 superior in terms of properties and qualities from products manufactured or distributed to non-  
17 salons.  
18

19 3. The cachet attached to a "salon-only" product induces consumers to pay a  
20 premium for Defendant's products under the false pretense that they are distinct from non-salon  
21 products, when they are, in fact, available for purchase at mass retailers as are non-salon  
22 products.  
23

24 4. Regardless of whether Defendant's products are considered, or actually are, high  
25 quality products, Defendant is using the "salon-only" designation – which is false and misleading  
26 – to market its products as professional, thereby inducing customers to pay a premium.  
27  
28

7. Plaintiff brings this action individually and on behalf of all those similarly situated to seek redress for injury caused by Defendant's wrongful conduct.

8. This action is within the original jurisdiction of this Court by virtue of 28 U.S.C. §1332(d)(2). Plaintiff is a citizen of a different state than the Defendant, and the amount in controversy in this class action exceeds \$5 million, exclusive of interest and costs.

9. This Court has personal jurisdiction over Defendant because Defendant has intentionally and purposefully availed itself of the markets and laws of the State of California by transacting business in this State.

10. Venue is proper in this District pursuant to 28 U.S.C. §1391(a)(1)-(2). Plaintiff resides in this district and bought Defendant's products within this District.

11. Plaintiff Nancie Ligon is a citizen of California who resides in Sonoma, California. Plaintiff purchased L'Oréal's Matrix Biolage Shampoo at Marketplace Haircutters, a professional hair salon, located at 201 West Napa Street, Sonoma, California 95476 on June 19, 2012, and Matrix Biolage Shampoo and Conditioner at the Big Kmart Store, located at 261 North McDowell Boulevard, Petaluma, California 94954 on April 19, 2012.

1           12. Plaintiff purchased the Matrix Biolage Shampoo and Conditioner in reliance upon  
2 their labels indicating that they are sold only in professional beauty salons. She understood these  
3 labels as confirming that the Matrix line of hair care products is superior in properties and  
4 qualities to products manufactured for non-salons. Plaintiff reasonably relied on Defendant's  
5 representation that Matrix Biolage Shampoo and Conditioner were "professional" products when  
6 she purchased them. Plaintiff further understood that, by advertising that the Matrix line of  
7 products was available only in professional salons, Defendant intended to convey to consumers  
8 that the Matrix line of products was somehow unique and distinct from hair care products that  
9 are not labeled "salon only." As discussed below, to the extent L'Oréal is trading off the "for  
10 sale only in professional beauty salons" label and the "professional salon" cachet associated with  
11 that label, they are engaging in false advertising. Plaintiff was deceived and misled by  
12 Defendant's labeling of its product and is, accordingly, a person who "has suffered injury in fact  
13 and has lost money . . . as a result of . . . unfair competition" within the meaning of Cal. Bus. &  
14 Prof. Code §17204.  
15

17           13. Defendant L'Oréal is a Delaware corporation with headquarters at 575 Fifth  
18 Avenue, New York, New York 10017. Defendant L'Oréal is engaged in the business of  
19 manufacturing and distributing hair care products under the "Matrix" brand name. Matrix offers  
20 a wide range of hair care products under its brand, including: Biolage, Amplify, Sleek.look,  
21 Vavoom, Curl.life, Color.smart, Opti.smooth, SOCOLOR and Color Sync. All Matrix products  
22 bear Matrix's name and trademarks and are listed on Defendant L'Oréal's website under  
23 "brands."<sup>1</sup>  
24

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25  
26  
27 <sup>1</sup> <http://lorealusa.com/en/us/>  
28

**FACTUAL ALLEGATIONS**

14. Hair care products generally fall into two broad categories: (1) mass market products that are marketed and sold through chain drug stores, grocery stores, department stores, and mass retailers such as Target, CVS, Walgreens, Kmart and Kroger and (2) professional or salon-only products that are marketed for sale only through professional beauty salons.

15. Defendant L'Oréal falsely represents to the public that its Matrix hair care products are manufactured exclusively for the professional salon industry and are therefore only available and sold through professional beauty salons or beauty schools.

**A. Defendant's False and Misleading Labeling and Advertising**

16. Defendant advertises its products as for sale only in professional beauty salons on its product labels, on the internet, and in print advertising.

17. A bottle label for a Matrix product reflecting the salon-only designation is attached to this Complaint as Exhibit A.

18. Defendant also maintains websites that advertise the professional nature of its salon-only products, including: [www.loreal.com](http://www.loreal.com), [www.matrix.com](http://www.matrix.com), and [www.matrixbeautiful.com](http://www.matrixbeautiful.com). Defendant L'Oréal's website specifically distinguishes its products between those sold as "Consumer Products" and those sold as "Professional Products." Matrix Biolage is categorized as a "Professional Product," distributed only through salons. It is not included in the list of "Consumer Products" sold in retail outlets.

19. The "Professional Product" designation under which Matrix Biolage is categorized on [www.lorealusa.com](http://www.lorealusa.com) states, "L'Oréal Professional supplies a network of exclusive distributors who service professional hairdressers with their cutting edge, professionally



1 exclusive haircolor, haircare and styling products.”<sup>2</sup> The website further represents that its  
 2 “Professional Products” “are formulated to bring unrivaled results when applied by  
 3 professionally trained hairdressers.”<sup>3</sup>

4 20. Defendant’s advertising on its website<sup>4</sup> underscores the purported distinction  
 5 between its professional and consumer products by proclaiming the following:  
 6

- 7 • To ensure a full refund, you MUST have purchased the product
- 8 from an authorized salon/spa. Matrix can only guarantee the
- 9 performance of our products when purchased through an
- 10 authorized salon/spa. If you have purchased any of our products
- 11 from the following, we cannot guarantee that the products are
- 12 within our standards and therefore will not be able to provide you
- 13 with a refund.
- 14 • Unauthorized Sales Outlets
- 15 • Any Mass Retailer
- 16 • Mass Discount Store
- 17 • Grocery Store
- 18 • Online Purchases from non-L’Oréal Professional Salon Product Website

19 \* \* \*

20 Only products purchased in a salon or spa are guaranteed to perform to our  
 21 standards. . . .

22 21. Defendant has created a demand and cachet for its products by labeling and  
 23 advertising them as available for sale only through professional salons. These representations  
 24 are an important aspect of the products’ claimed nature, characteristics, and qualities and allows  
 25 Defendant to demand a premium for the products.

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26 <sup>2</sup> *Id.*

27 <sup>3</sup> *Id.*

28 <sup>4</sup> <http://www.matrix.com/antidiversion/qa.aspx>

22. By advertising its brands as professional grade and available only through salons, Defendant captures the cachet, goodwill, price, and significant revenues that salon-only products command. The salon-only label implies a superior quality product that is available only through professionals in hair care. The salon-only representation also is intended to differentiate these products from those sold only by mass retailers.

**B. Defendant Benefits from Claimed "Diversion" of Its Products**

23. Despite Defendant's claims that Matrix professional/salon-only hair care products are sold only in salons, these products are, in fact, sold throughout the country in drug stores, grocery stores, and other mass merchandise retail stores, including Target, Kmart and Walgreens.

24. The sale of professional or salon-only products through stores that do not have a salon on the premises is known in the industry as "diversion."

25. On the "Anti-Diversion" page of its website,<sup>5</sup> Matrix suggests that Matrix products sold outside of professional salons are sold without Defendant's knowledge, approval or consent: "Products are diverted by unauthorized distributors and salons or their employees, *plus other dishonest individuals who see profit in piracy.*" (Emphasis supplied.)

26. Matrix's website further claims that it

states on all its advertising "Genuine Products Guaranteed Only In Salons." This means if you buy our products in a supermarket, drugstore or any other outlet other than a salon, we cannot guarantee that it is an authentic Matrix product that will perform as tested.

27. As part of its "anti-diversion" advertising, the website further states that it "continues in its commitment to aggressively combat diversion" and claims to engage in specific strategies to achieve that goal.

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<sup>5</sup> <http://www.matrix.com/antidiversion/>

1           28. Upon information and belief, Defendant is aware that Matrix professional/salon-  
2 only hair care products are being sold through stores other than salons, and that the product sold  
3 is the same "authentic" product sold in its salons.

4           29. According to data compiled by ACNielsen's Market Decisions for the years 2000  
5 to 2011, Defendant L'Oréal owns three heavily diverted brands: Matrix, Redken, and Pureology.  
6 When L'Oréal acquired Matrix in 2000, Matrix had sold \$3 million of products outside of salons.  
7 Under L'Oréal's ownership, by 2008, Matrix had over \$122 million in sales outside of salons.

8           30. For Defendant, every bottle of its professional product sold outside of its stated  
9 and intended professional/salon-only use results in an increase in sales revenues and profits.  
10

11           31. Upon information and belief, Defendant has the technology and the ability to  
12 trace diverted products to particular distributors, but has instead chosen to turn a blind eye  
13 toward the practice despite its public statements opposing diversion and its claimed  
14 "commitment" to protecting the integrity of its professional brand by stopping the practice.  
15

16           32. Upon information and belief, Defendant has known of the magnitude of the  
17 diversion problem for years and continues to profit from it.

18           33. Defendant's claims that it opposes diversion are false as demonstrated by its  
19 failure to take meaningful steps to halt the practice and the hundreds of millions of dollars that  
20 Defendant earns each year from the sale of diverted product.  
21

22 **C. Defendant Has Profited from Its False and Misleading Labeling and Advertising**

23           34. Defendant's labeling, print and internet advertising, and promotion of its  
24 professional products as sold to salons only are literally false and misrepresent the nature,  
25 characteristics, qualities and origin of Defendant's products.

26           35. Despite its advertising and labeling of its products as available only through  
27 professional salons, Defendant's salon-only products are widely available in grocery stores, drug  
28



1 stores, mass merchandise stores, and over the internet. At the point of sale, a reasonable  
2 consumer would not have the ability to independently investigate why or how a product that is  
3 labeled "for sale only in professional beauty salons" is sold in a mass retailer such as Kmart.  
4 Defendant knows of this diversion and knowingly profits from it as described above.  
5

6 36. Defendant's labeling, and its print and internet advertising of its professional  
7 products as available only in salons, are deceptive and misleading. These representations are  
8 likely to cause confusion among consumers and to deceive them as to the affiliation, connection  
9 or association of Defendant's products with professional salons, falsely leading consumers to  
10 believe that the products have qualities that make them distinct and unique because of their  
11 exclusive salon connection and that differentiate these products from hair care products  
12 otherwise commercially available in non-salon retail outlets.  
13

14 37. Defendant purportedly knows that consumers are willing to pay a premium for  
15 products sold exclusively through salons because they associate these products with professional  
16 expertise.

17 38. Defendant has profited from its false advertising not only with respect to products  
18 sold in professional salons, but also with respect to products diverted and sold outside of salons  
19 through consumer retail outlets including chain drug stores, grocery stores, department stores,  
20 and mass retailers such as Target, Kmart, CVS, Walgreens, and Kroger grocery stores. The  
21 "salon-only" designation causes consumers to view Defendant's Matrix line of professional  
22 salon products as having a cachet and a presumed quality that commands a higher price than is  
23 paid for other non-professional grade products. Accordingly, consumers are willing to pay a  
24 premium price for Matrix products both in salons and outside salons.  
25  
26  
27  
28

**CLASS ACTION ALLEGATIONS**

39. This action is brought and may be properly maintained as a class action pursuant to Fed. R. Civ. P. 23. Plaintiff seeks certification of the following two classes:

(a) **Nationwide Class:** All consumers throughout the United States who purchased Matrix professional hair care products during the liability period for their household use, rather than for resale or distribution, that were marketed under the brand name Matrix and were labeled or advertised as sold only through professional salons or beauty schools.

(b) **California Class:** All consumers within the State of California who purchased Matrix professional hair care products during the liability period for their household use, rather than for resale or distribution, that were marketed under the brand name Matrix and were labeled or advertised as sold only through professional salons or beauty schools.

40. Both classes defined above are referred to herein as the "Class." Plaintiff reserves the right to change the Class definition at any time with proper notice.

41. Excluded from the Class is Defendant, any entity in which Defendant has a controlling interest or which holds a controlling interest in Defendant, including, but not limited to, any salons or distributors in which Defendant has a controlling interest or which Defendant has previously identified as having diverted Defendant's professional products during the liability period and Defendant's legal representatives, assigns and successors.

42. Plaintiff also specifically excludes from the Class any person or entity who has previously commenced and concluded a lawsuit against Defendant arising out of the subject matter of this lawsuit.

43. Plaintiff also specifically excludes from the Class the Judge assigned to this case and any member of the Judge's immediate family.

44. The Class is so numerous that individual joinder is impracticable. The actual number of Class members is unknown at this time, but on information and belief will likely

1 number in the thousands. The actual number of Class members can be determined through sales  
2 records in the possession of Defendant.

3 45. Numerous questions of law and fact common to Plaintiff and the Class  
4 predominate over any questions that may affect individual Class members, including, without  
5 limitation:  
6

7 (a) Whether Defendant's advertising that its salon-only products are available  
8 only in salons is literally false;

9 (b) Whether Defendant's advertising that its salon-only products are available  
10 only in salons is false, misleading, and likely to deceive or confuse  
11 consumers;

12 (c) Whether Defendant knew or should have known of the false and misleading  
13 nature of its advertising and labeling before putting the products subject to  
14 such advertising and labeling into the stream of commerce for purchase and  
15 use by Plaintiff and the Class;  
16

17 (d) Whether Defendant's professional hair care products are deceptive in that they  
18 are not as advertised, marketed, and labeled;

19 (e) Whether Defendant acted intentionally in its deceptive and false advertising;

20 (f) Whether Defendant's conduct described above resulted in ill-gotten gains for  
21 Defendant and, if so, the extent of the ill-gotten gains; and  
22

23 (g) Whether, and to what extent, injunctive relief should be imposed on  
24 Defendant to prevent such conduct in the future.

25 46. Plaintiff's claims are typical of the claims of the Class, in that Plaintiff, like all  
26 Class members, purchased Matrix professional hair care products from a salon and/or a mass  
27 retailer believing that the product was superior to a non-salon product because of the "salon-only  
28

1 designation.” The misrepresentations to Plaintiff when she purchased the products are similar to  
2 the misrepresentations made to other Class members across the country (and across California).  
3 Plaintiff and all Class members have suffered economic injury as a result of Defendant’s  
4 misrepresentations, and Defendant has realized ill-gotten gains associated with the sale of its  
5 products both outside and inside salons.  
6

7 47. Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff has  
8 retained experienced counsel with the necessary expertise and resources to prosecute a  
9 nationwide consumer class action. Plaintiff and her counsel do not foresee any circumstances  
10 where the interests of Plaintiff would be adverse to the interests of the Class.  
11

12 48. A class action is superior to other available methods for the fair and efficient  
13 adjudication of this controversy. It would be economically impractical for Plaintiff and Class  
14 members to pursue individual actions against Defendant as the costs of prosecution would likely  
15 surpass their individual damages. Thus, Plaintiff and Class members would be left with no  
16 effective remedy for the damages they suffered and continue to suffer. Class treatment of  
17 Plaintiff’s claims will permit Plaintiff and the Class to vindicate their rights against Defendant  
18 and conserve the resources of the Court and the Parties. Class treatment will also avoid the  
19 possibility of inconsistent outcomes that could result from a multitude of individual actions in  
20 varying jurisdictions nationwide.  
21

## 22 COUNT I

### 23 For Violations of California Business & Professions Code Section 17200, *et seq.* 24 Unlawful Business Acts and Practices

25 49. Plaintiff incorporates by reference and realleges all allegations set forth in the  
26 preceding paragraphs.

27 50. The acts of Defendant, as described above, constitute unlawful business acts and  
28 practices.



1           51. In particular, Defendant's manufacturing, marketing, advertising, packaging,  
2 labeling, distributing, and selling of its professional hair care products violate California's  
3 Sherman Food, Drug, and Cosmetics Law, Cal. Health & Safety Code §109875, *et seq.* (the  
4 "Sherman Act").

5  
6           52. In relevant part, the Sherman Act declares that cosmetics are misbranded if the  
7 labeling on such cosmetics is false or misleading in any particular way and further provides that  
8 it is unlawful for any person to misbrand any cosmetic. Cal. Health & Safety Code §§111770,  
9 111765.

10           53. The Sherman Act defines a "person" to include corporations. Cal. Health &  
11 Safety Code §109995. Defendant is a corporation and, therefore, is a "person" within the  
12 meaning of the Sherman Act.

13  
14           54. The Sherman Act defines "cosmetic" to mean "any article, or its components,  
15 intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to,  
16 the human body, or any part of the human body, for cleansing, beautifying, promoting  
17 attractiveness, or altering the appearance." Cal. Health & Safety Code §109900. Defendant's  
18 Matrix line of professional hair care products constitutes "cosmetics" within the meaning of the  
19 Sherman Act.

20  
21           55. The business practices alleged above are unlawful under the Consumers Legal  
22 Remedy Act, Cal. Civ. Code §1750, *et seq.* ("CLRA"), which forbids deceptive advertising.

23           56. The business practices alleged above are also unlawful under Cal. Bus. & Prof.  
24 Code §17200, *et seq.*, because they violate §17500, *et seq.*, which forbids untrue and misleading  
25 advertising.

26           57. As a result of the business practices described above, Plaintiff and the other  
27 members of the Class, are entitled, pursuant to Cal. Bus. & Prof. Code §17203, to an order  
28

1 enjoining future unlawful conduct on the part of Defendant and to such other orders or  
2 judgments as may be necessary to force Defendant to disgorge ill-gotten gains or unlawful  
3 profits and to fully restore to persons of interest any money or property acquired by Defendant  
4 through the mislabeling or deceptive marketing or sale of Matrix professional salon-only  
5 products.  
6

7 58. The above-described unlawful business acts and practices of Defendant present a  
8 threat and reasonable likelihood of continued deception to Plaintiff and other members of the  
9 Class in that Defendant has systematically perpetrated, and continues to perpetrate, such acts or  
10 practices upon members of the Class by means of its misleading manufacturing, marketing,  
11 advertising, packaging, labeling, distributing, and selling of Matrix hair care products marketed  
12 as professional, salon-only, products.  
13

14 59. THEREFORE, Plaintiff prays for relief as set forth below.

## 15 **COUNT II**

### 16 **For Violations of California Business & Professions Code Section 17200, *et seq.*** 17 **Unfair Business Acts and Practices**

18 60. Plaintiff incorporates by reference and realleges all allegations set forth in the  
19 preceding paragraphs.

20 61. The acts of Defendant, as described above, constitute unfair business acts and  
21 practices.

22 62. Plaintiff and the other members of the Class who purchased Defendant's Matrix  
23 professional, salon-only hair care products, suffered injury by virtue of buying products they  
24 believed had exclusive professional salon affiliations which were not, in fact, professional salon-  
25 only products and which they would not have purchased absent Defendant's unfair marketing,  
26 advertising, packaging, labeling, distributing, and selling methods.  
27  
28

1           63. There is no benefit to consumers or competition from deceptive marketing,  
2 advertising, packaging, labeling, distributing or selling of Defendant's hair care products.  
3 Instead, the harm to consumers and competition is significant and substantial.

4           64. Plaintiff and the other members of the Class had no reasonable way of knowing  
5 that the products they thought were superior products having exclusive professional salon  
6 affiliations were, in fact, not as marketed, advertised, packaged, labeled and sold. Thus, they  
7 could not have reasonably avoided the injury each of them suffered.

8           65. Defendant's conduct, as described above, is unfair in that it is unethical,  
9 unscrupulous, offends public policy and is substantially injurious to Plaintiff and the other  
10 members of the Class.

11           66. As a result of the business acts and practices described above, Plaintiff and the  
12 other members of the Class are entitled, pursuant to Cal. Bus. & Prof. Code §17203, to an order  
13 enjoining future unfair conduct on the part of Defendant as described above, and such other and  
14 further orders or judgments as may be necessary to force Defendant to disgorge its ill-gotten  
15 gains or unlawful profits and to fully restore to any person of interest any money or property  
16 acquired by Defendant wrongly a result of having mislabeled or deceptively marketed its Matrix  
17 professional hair care products.

18           67. THEREFORE, Plaintiff prays for relief as set forth below.

19  
20  
21  
22                           **COUNT III**

23                   **For Violations of California Business & Professions Code Section 17200, *et seq.***  
24                                   **Fraudulent Business Acts and Practices**

25           68. Plaintiff incorporates by reference and realleges all allegations as set forth in the  
26 preceding paragraphs.

27           69. The acts of Defendant, as described above, constitute fraudulent business  
28 practices under Cal. Bus. & Prof. Code §17200, *et seq.*

70. As more fully described above, Defendant's misleading marketing, advertising, packaging, labeling, distributing and selling of Defendant's professional salon hair care products are likely to deceive reasonable consumers, and, in fact, unquestionably deceived Plaintiff regarding the characteristics of Defendant's product.

71. This fraud and deception caused Plaintiff and other members of the Class to purchase Defendant's Matrix hair care products based upon their purported exclusive professional salon affiliation and to pay a premium price for such products that they would not have paid had they known that the products were not professional salon-only products.

72. As a result of the business acts and practices described above, Plaintiff and other members of the Class are entitled, pursuant to Cal. Bus. & Prof. Code §17203, to an order enjoining future fraudulent business acts and practices on the part of Defendant as described above, and such other and further orders or judgments as may be necessary to force Defendant to disgorge its ill-gotten gains and unlawful profits and to fully restore any person of interest wronged as a result of having spent money on Matrix products that were mislabeled or deceptively marketed and sold by Defendant.

73. THEREFORE, Plaintiff prays for relief as set forth below.

#### COUNT IV

#### **For Violations of California Business & Professions Code Section 17500, *et seq.* Misleading and Deceptive Advertising**

74. Plaintiff incorporates by reference and realleges all allegations set forth in the preceding paragraphs.

75. Plaintiff asserts this cause of action for violations of Cal. Bus. & Prof. Code §17500, *et seq.*, through misleading and deceptive advertising.

76. At all times material, Defendant engaged in a scheme of advertising Matrix products as professional salon-only hair care products when, in fact, Defendant knew that these



1 products were also sold in non-salon retail stores. In engaging in this conduct, Defendant  
2 misrepresented an important characteristic of its products – i.e., their exclusive professional  
3 salon affiliation. Defendant’s advertisements and inducements concerning its professional salon-  
4 only products were made within the State of California and come within the definition of  
5 advertising contained in Cal. Bus. & Prof. Code §17500, *et seq.*, in that such advertisements and  
6 promotions were intended as inducements to consumers, including Plaintiff and members of the  
7 Class, to purchase Defendant’s products. Defendant knew, or in the exercise of reasonable care  
8 should have known, that its labeling of products was misleading and deceptive.

10 77. In furtherance of its plan and scheme, Defendant has disseminated mislabeled  
11 products and distributed advertising, packaging, and other promotional materials, that  
12 misleadingly and deceptively represent that Matrix products are sold only through salons.  
13 Consumers, including Plaintiff and members of the Class, were targets of these representations  
14 and reasonably relied on them.

16 78. Defendant’s acts were and are likely to deceive reasonable consumers by  
17 suggesting that the Matrix professional hair care products have an exclusive professional salon  
18 affiliation which they do not, in fact, have, all in violation of the “misleading prong” of Cal. Bus.  
19 & Prof. Code §17500.

21 79. As a result of the above violations of the “misleading prong” of Cal. Bus. & Prof.  
22 Code §17500, *et seq.*, Defendant has been unjustly enriched at the expense of Plaintiff and other  
23 members of the Class. Pursuant to Cal. Bus. & Prof. Code §17535, Plaintiff and other members  
24 of the Class are entitled to an order of this Court enjoining such conduct on the part of Defendant  
25 going forward, and such other and further orders or judgments as may be necessary to force  
26 Defendant to disgorge its ill-gotten gains or unlawful profits and to fully restore any person of  
27

1 interest wronged as a result of having spent money on Matrix products that were mislabeled or  
2 deceptively marketed and sold by Defendant.

3 80. THEREFORE, Plaintiff prays for relief as set forth below.

4 **COUNT V**

5 **For Violations of California Business & Professions Code Section 17500, *et seq.***  
6 **Untrue Advertising**

7 81. Plaintiff incorporates by reference and realleges all allegations set forth in the  
8 preceding paragraphs.

9 82. Plaintiff asserts this cause of action for violations of Cal. Bus. & Prof. Code  
10 §17500, *et seq.* for untrue advertising by Defendant.

11 83. At all times material, Defendant was engaged in a scheme that involved offering  
12 Matrix professional, salon-only, hair care products for sale to Plaintiff and other members of the  
13 Class by way of, *inter alia*, commercial marketing, advertising, packaging, labeling, and other  
14 promotional materials. These materials misrepresented that Matrix professional hair care  
15 products were marketed and sold only through salons, thereby leading consumers to believe that  
16 the products were distinctive and unique because of their professional salon affiliation. These  
17 representations and inducements were made within the State of California and come within the  
18 definition of advertising as contained in Cal. Bus. & Prof. Code §17500, *et seq.* in that these  
19 representations were intended to induce consumers to purchase Matrix products and were  
20 intended to reach members of the Class, including Plaintiff. Defendant knew that the salon-only  
21 claims were untrue.

22 84. The above-described acts of Defendant in disseminating untrue advertising  
23 throughout the State of California deceived Plaintiff and other members of the Class by  
24 obfuscating and misrepresenting the nature and quality of the Matrix professional hair care  
25 products, all in violation of the "untrue prong" of Cal. Bus. & Prof. Code §17500.

85. As a result of the above violations of the “untrue prong” of Cal. Bus. & Prof. Code §17500, *et seq.*, Defendant has been unjustly enriched at the expense of Plaintiff and the other members of the Class. Pursuant to Cal. Bus. & Prof. Code §17535, Plaintiff and the other members of the Class are entitled to an order of this Court enjoining future untrue advertising by Defendant as described above, and such other and further orders or judgments as may be necessary to force Defendant to disgorge its ill-gotten gains and unlawful profits and to fully restore any person of interest wronged as a result of having spent money on Matrix products that were mislabeled or deceptively marketed and sold by Defendant.

86. THEREFORE, Plaintiff prays for relief as set forth below.

#### COUNT VI

#### **For Violations of the California Consumers Legal Remedies Act, California Civil Code Section 1750, *et seq.* Injunctive Relief Only**

87. Plaintiff incorporates by reference and realleges all allegations set forth in the preceding paragraphs, except to the extent that they seek anything other than injunctive relief.

88. This cause of action is brought under the CLRA.

89. Defendant’s actions, representations, and conduct have violated, and continue to violate the CLRA, because they relate to transactions that are intended to result, or which have resulted, in the sale of goods to consumers.

90. Plaintiff and the other members of the Class are “consumers” as that term is defined by the CLRA, Cal. Civ. Code §1761(d).

91. The Matrix professional hair care products that Plaintiff and other members of the Class purchased from Defendant are “goods” within the meaning of Cal. Civ. Code §1761(a).

92. By engaging in the actions, misrepresentations, and misconduct set forth in this Complaint, Defendant has violated, and continues to violate, Section 11709(a)(5) of the CLRA.

1 Specifically, in violation of Cal. Civ. Code §1770(a)(5), Defendant's acts and practices constitute  
2 unfair methods of competition and unfair or fraudulent acts or practices in that they misrepresent  
3 that goods have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities  
4 which they do not have.

5  
6 93. By engaging in the actions, misrepresentations, and misconduct set forth in this  
7 Complaint, Defendant has violated, and continues to violate, Section 1170(a)(7) of the CLRA.  
8 Specifically, in violation of Cal. Civ. Code §1770(a)(7), Defendant's acts and practices constitute  
9 unfair methods of competition and unfair or fraudulent acts or practices in that they misrepresent  
10 the particular standard, quality or grade of goods.

11  
12 94. By engaging in the actions, misrepresentations and misconduct set forth in this  
13 Complaint, Defendant has violated, and continues to violate, Section 1770(a)(9) of the CLRA.  
14 Specifically, in violation of Cal. Civ. Code §1770(a)(9), Defendant's acts and practices constitute  
15 unfair methods of competition and unfair or fraudulent acts or practices in that they advertise  
16 goods with intent not to sell them as advertised.

17 95. Pursuant to Cal. Civ. Code §1780(a) (2), Plaintiff requests that this Court enjoin  
18 Defendant from continuing to employ the unlawful methods, acts, and practices alleged herein.  
19 If Defendant is not restrained from engaging in these types of practices in the future, Plaintiff  
20 and other members of the Class will continue to suffer harm.

21  
22 96. This cause of action does not, at this point, seek monetary damages but is  
23 confined solely to injunctive relief. Plaintiff will seek to amend this Complaint to seek damages  
24 in accordance with the CLRA after providing Defendant with notice pursuant to Cal. Civ. Code  
25 §1782.

26 97. THEREFORE, Plaintiff prays for injunctive relief as provided by the CLRA.  
27  
28



**COUNT VII**

**Unjust Enrichment**

98. Plaintiff incorporates by reference and realleges all allegations set forth in the preceding paragraphs.

99. As a result of its deceptive conduct, Defendant was enriched at the expense of Plaintiff and those similarly situated.

100. It would be unjust and inequitable for Defendant to retain its profits earned from misrepresenting its products to increase sales.

101. Therefore, the funds that Defendant received from consumers should be disgorged as illegally gotten gains.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff, on behalf of herself and all other similarly situated, prays for judgment as requested above against Defendant and further prays for:

A. An order certifying the Class proposed in this Complaint and appointing Plaintiff and her counsel to represent the Class and requiring Defendant to bear the cost of class notice;

B. Restitution and/or disgorgement of amounts paid by Plaintiff and members of the Class for the purchase of the product, together with interest from the date of payment;

C. Compensatory damages to the extent allowed by law;

D. Injunctive relief only pursuant to Cal. Civ. Code §1780, as Plaintiff through this Complaint at this point expressly does not seek any monetary type of relief pursuant to the CLRA;

E. An order granting injunctive relief requiring Defendant to stop marketing its professional hair care products as products sold only in salons;

F. Statutory prejudgment interest;

1 G. Reasonable attorneys' fees as permitted by Cal. Civ. Proc. Code §1021.5, as well  
2 as the costs of this action;

3 H. Other legal and equitable relief permitted with respect to the causes of action  
4 stated herein;

5 I. A trial by jury on all issues so triable; and;

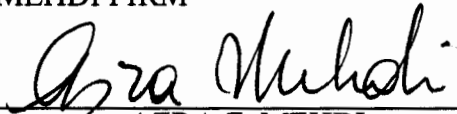
6 J. Such other and further relief as the Court may deem just and proper.

7  
8 **DEMAND FOR JURY TRIAL**

9 Plaintiff hereby demands a trial by jury with respect to any claims so triable.

10 DATED: August 30, 2012

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